

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

DAVID D'MATO

Plaintiff,

vs.

DAVID FARRIER et al.

Defendants.

)
)
)
)
)
)
)
)
)
)

2:16-cv-04081 MJW

JOINT STIPULATION OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW Plaintiff, David P. D'Amato ("Plaintiff"), and Defendants, David Farrier and Maljack Productions, Inc. ("Defendants") (collectively "the Parties") hereby agree and stipulate as follows:

WHEREAS, Plaintiff filed a complaint on March 2, 2016, in the Thirteenth Judicial Circuit Court in Boon County, Missouri alleging causes of action for defamation, defamation *per se* and negligent infliction of emotional distress, which was removed to the United States District Court for the Western District of Missouri, Case No. 2:16-cv-04081-MJW,

WHEREAS, Plaintiff filed a complaint on March 3, 2016, in the United States District Court of Utah, Central Division, Case No. 2:16-cv-00177-PMW, alleging causes of action for defamation, defamation *per se*, false light and to enjoin further publication of defamatory statements,

WHEREAS, no other parties have been served with process, and no other defendants have answered (joined issue) in Case No. 2:16-cv-04081-MJW or 2:16-cv-00177-PMW;

WHEREAS, on March 25, 2016, Defendants filed a Motion to Dismiss Case No. 2:16-cv-00177-PMW based on improper venue and lack of jurisdiction,

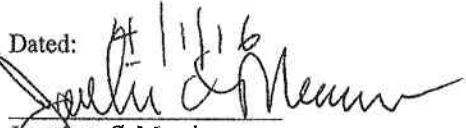
WHEREAS, on March 25, 2016, Defendants filed a Motion to Dismiss Case No. 2:16-cv-04081-MJW based on improper venue and lack of jurisdiction,

NOW, THEREFORE, the Parties agree and stipulate as follows:

1. That Defendants' motions to dismiss in Case Nos. 2:16-cv-04081-MJW and 2:16-cv-00177-PMW are hereby withdrawn.
2. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Parties jointly stipulate to the voluntary dismissal of Case No., 2:16-cv-04081-MJW, *without prejudice*.
3. The Parties have executed a second stipulation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), jointly stipulating to the voluntary dismissal of Case No. 2:16-cv-00177-PMW, *without prejudice*.
4. The Parties agree that in place of the Utah and Missouri actions, Plaintiff will refile one action in the United States District Court for the Southern District of New York ("SDNY"), asserting claims of defamation, defamation per se, false light, negligent infliction of emotional distress, and to enjoin further publication of defamatory statements. Nothing in this paragraph shall limit the defenses or arguments of any defendant with regard to any cause of action included by Plaintiff in any action filed in the SDNY.
5. The Parties agree that counsel for Defendants, Cameron Stracher, will accept service of the newly filed SDNY Summons and Complaint ("Complaint"), on behalf of David Farrier, Dylan Reeve, A Ticklish Tale Limited (A New Zealand Corporation), and that David Farrier, Dylan Reeve, and A Ticklish Tale Limited will not challenge or move to dismiss the Complaint for lack of jurisdiction or improper venue.
6. The Parties agree that this action is to be withdrawn, *without prejudice*, and without costs to any of the Parties.

7. The Parties further agree and stipulate that Plaintiff will not refile its cause of action against Maljack Productions, Inc. in SDNY until such time as factual development of the record would justify Plaintiff in doing so. That Plaintiff will have the right to add other parties to the Complaint.
8. This stipulation may be executed in counterparts and facsimile copies will have the same effect as an original.

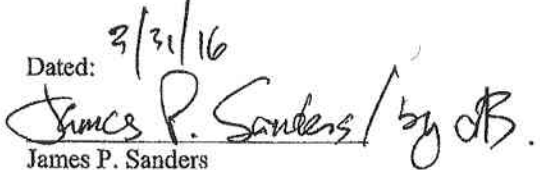
Dated: 3/31/16


Jonathan C. Messina
Leeds Brown Law, P.C.
One Old Country Road, Suite 347
Carle Place, New York 11514
Telephone: (516) 873-9550
jmessina@leedsbrownlaw.com
Pro Hac Vice in Missouri Pending

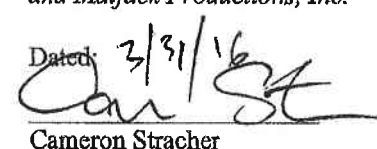
Dated: 4/1/16


Justin K. Summary
Allan & Summary
4542 West Pine Blvd.
Saint Louis, Mo 63108
Telephone: (314) 361-5678
Facsimile: (314) 828-8292
jsummary@allanlaw.com
Attorneys for David D'Amato

Dated: 3/31/16


James P. Sanders
120 S. Central Avenue, Suite 700
St. Louis, Missouri 63105
Telephone: (314) 719-3700
Facsimile (314) 719-3710
jsanders@salawus.com
*Attorneys for David Farrier and
and Maljack Productions, Inc.*

Dated: 3/31/16


Cameron Stracher
4 New York Plaza, 2d Floor
New York, NY 10004
Telephone: 212-743-6513
Facsimile: 646-810-3089
Email: cam@stracherlaw.com
Pro Hac Vice Pending in Missouri